

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8
RETURNS AND COLLECTIONS**

560-7-8-.46 Definition of Business Enterprise.

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(1) Purpose.

(a) This regulation ~~defines the term “~~identifies the North American Industry Classification System (NAICS) Codes that accompany the industries that qualify as a business enterprise” ~~that applies under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated.~~

(2) Business Enterprise Defined.

(a) The term “business enterprise” means any corporation, partnership, limited liability company, sole proprietorship, or other business entity or the headquarters of such business entity that is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, or research and development industries.

1. The term “business enterprise” excludes all child care businesses and retail businesses, except as referenced in O.C.G.A.

§ 48-7-40.22.

2. The Department of Revenue will use the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2002 edition, to determine whether an entity is engaged in any of the qualifying industries cited in subparagraph (2)(a).

3. Taxpayers self-select their NAICS Codes. The NAICS website is: <http://www.census.gov/epcd/www/naics.html>

(b) An entity is a business enterprise engaged in a manufacturing industry if it ~~primarily engages in activities that correspond with those performed by establishments contained~~ is classified within NAICS Sector 31-33.

(c) An entity is a business enterprise engaged in a warehousing and distribution industry if it ~~primarily engages in storing and shipping tangible personal property and corresponds with activities performed by establishments contained~~ is classified within NAICS Subsectors 423, 424 and 493.

(d) An entity is a business enterprise engaged in a telecommunications industry if it ~~primarily engages in activities that correspond with those performed by establishments contained~~ is classified within NAICS U.S. ~~Industry~~ Industries 517110, 517211, 517212, 517310 and 517410.

(e) An entity is a business enterprise engaged in a research and development industry if it ~~primarily engages in activities that correspond with those performed by establishments contained~~ is classified within NAICS U.S. Industries 541710 and 541720.

(f) An entity is a business enterprise engaged in a processing industry if it ~~primarily engages in activities that correspond with those performed by manufacturing establishments~~ is classified in NAICS Sectors 31-33; or if it ~~primarily~~ engages in providing data processing services, which shall consist of only the following:

1. NAICS U.S. Industry 518210 [Data Processing, Hosting and Related Services] ~~that are primarily engaged in providing data processing services;~~

2. NAICS U.S. Industry 524292 [Third Party Administration of Insurance and Pension Funds] ~~that are primarily engaged in insurance claims processing services;~~

3. NAICS U.S. Industry 522320 [Financial Transactions Processing, Reserve, and Clearinghouse Activities] ~~that are primarily engaged in credit card processing services or financial transactions processing services;~~

4. NAICS U.S. Industry 511210 [Software Publishers] ~~that are primarily engaged in computer software publishing or publishing and reproduction;~~

5. NAICS U.S. Industry 541511 [Custom Computer Programming Services] ~~that are primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer; and~~

6. NAICS U.S. Industry 541214 [Payroll Services] ~~that are primarily engaged in providing payroll services.~~

(g) An entity is a business enterprise engaged in a tourism in-

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dustry if it ~~primarily engages in activities that correspond with those performed by establishments contained~~ is classified within:

1. NAICS Industry Group 7211 [Traveler Accommodation] ~~that are primarily engaged in providing lodging for the public;~~ however, establishments offering lodging for more than 30 consecutive days to the same customer are not deemed a business enterprise under ~~subparagraph (1)(a) of this regulation;~~

2. NAICS U.S. Industry 721211 [(Recreational Vehicle) Parks and Recreational Camps] ~~that are establishments primarily engaged in providing overnight or short term sites for recreational vehicles, trailers, campers or tents; however, establishments primarily engaged in the operation of residential trailer parks or primarily engaged in providing accommodations for more than 30 consecutive days to the same customer are not deemed a business enterprise under subparagraph (1)(a) of this regulation;~~

3. NAICS U.S. Industry 721214 [Recreational and Vacation Camps (except Campgrounds)] ~~that are establishments primarily engaged in operating overnight recreational camps, such as children's camps, family vacation camps, hunting and fishing camps, and outdoor adventure retreats that offer trail riding, white water rafting, hiking, and similar activities. ;~~

4. NAICS U.S. Industry 711310 [Promoters of Performing Arts, Sports, and Similar Events with Facilities] ~~that are either:~~

(i) ~~establishments primarily engaged in the operation of~~ however, sports complexes that are not open to the general public on a contract or fee basis are not deemed a business enterprise under this regulation;

~~(ii) establishments primarily engaged in the operation of sports stadiums or arenas;~~

~~(iii) establishments primarily engaged in the operation of fairs, concerts, or festivals;~~

5. NAICS U.S. Industry 713910 [Golf Courses and Country Clubs] that are ~~primarily~~ engaged in the operation of golf courses, which are associated with a resort development, open for use by the general public on a contract or fee basis; however, establishments ~~primarily~~ engaged in the operation of golf courses associated with housing developments are not deemed a business enterprise under ~~subparagraph (1)(a) of this regulation;~~

6. NAICS U.S. Industry 711211 [Sports Teams and Clubs] ~~that are primarily engaged in the operation of professional or semi-professional sport clubs;~~ however, for the purposes of this provision professional and semi-professional sport clubs include only those clubs that compensate athletes for their services as players and does not include amateur sport clubs, amateur sport leagues, or amateur sport associations;

7. NAICS U.S. Industry 711212 [Racetracks] ~~that are primarily engaged in the operation of racing facilities, including drag strips, motorcycle race tracks, auto or stock car race tracks or speedways;~~

8. NAICS U.S. Industry 713110 [Amusement and Theme Parks] ~~that are primarily engaged in the operation of amusement centers, amusement parks, theme parks, or amusement piers;~~

9. NAICS U.S. Industry 561520 [Tour Operators] ~~that are~~

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~~primarily engaged in the operation of~~ however, tour operators must operate tours within the State of Georgia to be included in this provision;

10. NAICS Subsector 487 [Scenic and Sightseeing Transportation] ~~that are:~~

~~(i) establishments primarily engaged in the operation of airplanes, helicopters, buses, vans or boats for excursion or sightseeing purposes within the State of Georgia; or~~

~~(ii) establishments primarily engaged in the operation of fishing boat charters, scenic railroads for amusement or aerial tramways;~~

11. NAICS U.S. Industry 114210 [Hunting and Trapping] that are ~~primarily~~ engaged in the operation of hunting preserves, trapping preserves, or fishing preserves or lakes open to the general public on a contract or fee basis;

12. NAICS Subsector 712 [Museums, Historical Sites, and Similar Institutions] ~~that are either:~~

~~(i) establishments that are primarily engaged in the operation of museums, planetariums, art galleries, aquariums, botanical gardens or zoological gardens; however, establishments that derive 50 percent or more of their gross revenue from the sale of goods or merchandise are not deemed a business enterprise under subpara-~~
~~graph (1)(a) of this regulation; or~~

~~(ii) establishments primarily engaged in natural wonder tourist attractions; .~~

(3) **“Retail businesses” defined.** The term “retail businesses” as used in subparagraph (2)(a)1. of this regulation means: any establishment that is primarily engaged in retailing merchandise and rendering services incidental to the sale of merchandise and included in NAICS Sector 44-45; any establishment that is primarily engaged in providing professional services and included in NAICS Industry Groups 5411, 5412 and 5413; and establishments that are primarily engaged in banking, savings and lending functions and included in NAICS Subsector 523, NAICS Industry Groups 5211, 5221, and 5222, and NAICS Industries 52231 and 52239.

(4) **“Establishment” defined.** ~~The term “establishment” means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. Note that if more than one business activity is conducted at the establishment then only those jobs engaged in a qualifying activity, which serves a function for the business on at least a regional scale, will be eligible. For example, a retail establishment which has a distribution activity serving the southeastern United States will only be eligible for the jobs engaged in the qualifying distribution activity and not for any retail jobs.~~

(5) Primarily Engaged in Activities.

(a) ~~A business enterprise is primarily engaged in activities that correspond with those performed by establishments contained within a particular NAICS level (i.e. Sector, Subsector, Industry Group, Industry, U.S. Industry) cited in paragraphs (2) and (3) of this regulation if more than 50 percent of the business enterprise’s total gross receipts are derived from activities from one or more of those levels. For the purposes of this subparagraph the term “gross~~

~~receipts” includes only those receipts derived from the sale of goods or services in the course of the business enterprise’s regular business.~~

~~(b) Affiliated group exclusion.~~

~~1. A business enterprise’s gross receipts to members of its affiliated group as defined under §1504(a) of the Internal Revenue Code are not included in its calculation of gross receipts under subparagraph (5)(a) of this regulation.~~

~~2. The 80 percent stock ownership requirements of §1504(a) of the Internal Revenue Code must be reduced to ownership of over 50 percent of the voting stock directly or indirectly owned or controlled by a qualifying corporation for purposes of this regulation.~~

~~(6) Request for Determination.~~

(a) In the event that a business believes it should qualify for the Job Tax Credit program, but is unsure if it meets the eligibility requirements outlined in the Code and regulation, a Request for Determination may be requested from the Department of Revenue and the Department of Community Affairs. The business should provide a detailed explanation of the activity being conducted at the business location for which the Job Tax Credits are being requested, along with any documentation to support the request. All documentation should be provided to both Departments for review. The Departments shall have 30 days from receipt of all necessary information to complete the review and issue a joint determination regarding the eligibility of the business for the job tax credit program.

(b) In the event that a business believes that it qualifies as a business enterprise for a tax credit other than a job tax credit, but is unsure if it meets the eligibility requirements outlined in the relevant Code and regulation, a Request for Determination may be requested from the Department of Revenue. The business should provide a detailed explanation of the activity ~~being conducted at the business location~~ for which the tax credits are being requested, along with any documentation to support the request. The Department shall have 30 days from receipt of all necessary information to complete the review and issue a determination regarding the eligibility of the business for the tax credit.

Authority O.C.G.A. § 48-2-12.